IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1015 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

VIBHUTIBEN V PATEL - Petitioner(s)
Versus
DISTRICT PRIMARY EDUCATION OFFICER - Respondent(s)

==========

Appearance :

MR NK MAJMUDAR for Petitioner(s) : 1,
MR DC DAVE for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 06/12/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or direction quashing and setting aside the order

dated 30th December 1996 by which the District Primary Officer, District Panchayat, Valsad, has removed the petitioner from service as Primary Teacher on the ground that when the petitioner was appointed as Primary Teacher the petitioner had produced false and fabricated marksheet of Standard X and obtained the appointment by false representation and cheating.

2. The petitioner was appointed as Primary Teacher in District-Panchayat, Valsad in the year 1986. For the purpose of appointment as 'Primary Teacher', the basic qualification required is 'PTC' and in the interview weightage is required to be given to 35% of the marks obtained in SSC and 55% of the marks obtained in PTC. On the basis of the marksheets submitted by the petitioner, the petitioner was appointed as 'Primary Teacher'. It appears that, in the marksheet submitted by the petitioner it was mentioned that she has obtained 57 marks out of

100 in Gujarati subject; 66 in Hindi, 79 in Social Studies, 73 in Sanskrit, 69 in Geography, and in Drawing 60 marks. On the basis of one application made to the District Primary Education Officer that the petitioner has obtained appointment by submitting false and fabricated marksheets, the District Primary Education Officer inquired into the matter and submitted a report, on the basis of which the petitioner came to be removed from service by holding that the petitioner has secured the appointment as Primary Teacher by submitting false and fabricated marksheet of SSC. Accordingly, by impugned order dated 30th December 1996 the petitioner came to be removed. Being aggrieved and dissatisfied with the impugned order dated 30th December 1996, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Ms. Moxa Thakker, learned advocate appearing for the petitioner has vehemently submitted that the impugned order dated 30th December 1996 is in breach of principles of natural justice. It is further submitted by her that the marks obtained in SSC were insignificant for the purpose of appointment as Primary Teacher, and only the marks obtained in PTC are required to be considered for such appointment and therefore the impugned order should be quashed and set aside, as by production of false and fabricated marksheet of SSC the petitioner is not benefitted and only PTC marks are required to be considered. It is further submitted by her that the impugned action has been taken after a period of 10 years and therefore also the impugned order should be quashed and set aside as after a period of 10 years the petitioner could not have been removed from the service.

4. The petition is opposed by the respondents. An affidavit-in-reply is filed on behalf of the respondents pointing out that on the basis of one complaint that the petitioner has obtained the appointment by submitting false and fabricated marksheet of SSC a preliminary enquiry was conducted and the District Primary Education Officer obtained necessary information from the concerned District Education Officer, and after verification it was found that the petitioner has submitted false and fabricated marksheet of SSC and has obtained the appointment by making false representation and cheating and therefore the impugned order is just and proper. It is submitted on behalf of the respondents that when the petitioner has obtained appointment by fraud, fraud vitiates everything and the impugned order of appointment of the petitioner as 'Primary Teacher' is a nullity and as soon as it was brought to the notice of the department with regard to the fraud committed by

the petitioner enquiry was ordered. It is further submitted that it is not disputed by the petitioner that she had not produced false and fabricated marksheet of SSC and that correct marksheet was not produced and even if the petitioner would have been given an opportunity it would not have changed the result and therefore it is submitted that in the facts and circumstances of the case the impugned order is not against the principles of natural justice. The learned counsel appearing for the respondent has relied upon the Judgment of the Division Bench of this Court in the case of ***Mahesh T. Rabari v. Director of Primary Education and Others,*** reported in ***2002 (1) GLH 438*** and has submitted that as held by the Division Bench of this Court lack of opportunity of hearing is of no consequence when the order which is sought to be challenged would not have made any difference even after hearing. It is submitted that in the present case in view of the admitted position

that false marksheet was produced and therefore even if opportunity would have been given it would not have made any difference. He has also relied upon the judgment of the Hon'ble Supreme Court in the case of ***S.L. Kapoor vs. Jagmohan and Others,*** reported in ***AIR 1981 S.C. Page 136*** as well as another decision of the Hon'ble Supreme Court in the case of ***Sanjay Kumar vs. State of Bihar & Others,*** reported in ***AIR 2000 S.C. Page 2783*** and has requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. The petitioner applied for the post of Primary Teacher and for the purpose of appointment as Primary Teacher the marks obtained in SSC as well as PTC both are required to be considered and the marks obtained by such candidate in SSC and PTC are given weightage in the ratio of 35 : 55. Therefore the contention on behalf of the petitioner that even

if the petitioner has produced the fake marksheet of SSC, the same would not have any consequence as only PTC marks are to be considered has no substance and cannot be accepted. It is not in dispute that when the petitioner applied for the post of Primary Teacher she produced the marksheet of SSC in which against the subject of Gujarati 57 marks are mentioned; against Hindi there is mention of 66 marks; Social Studies 65 marks; Mathematics 55 marks; Sanskrit 76 marks; Geography 69 marks and against Drawing 60 marks are mentioned. However, in fact the petitioner has obtained only 40 marks in Gujarati; 35 marks each in Hindi, Social Studies, Mathematics and Geography; 37 marks in Sanskrit and 44 marks in Drawing. The petitioner has thus produced false marksheet and had obtained appointment as Primary Teacher and after holding preliminary enquiry the impugned order came to be passed. At this stage, it is required to be noted that the petitioner is not disputing that she has produced false

certificate/marksheet.

6. It is the contention on behalf of the petitioner that the impugned order is in breach of principles of natural justice as the same has been passed without giving opportunity to the petitioner and therefore it is required to be quashed and set aside. In *Mahesh T. Rabari* [supra], the Division Bench of this Court has held that lack of opportunity of hearing is of no consequence when the order which is sought to be challenged would not have made any difference even after hearing. In *S.L. Kapoor's* case, the Hon'ble Supreme Court has observed as under;

> *"If upon admitted on indisputed facts only one conclusion was possible", then in such a case the principle that breach of natural justice was itself prejudiced, would not apply. In other words, if no*

> *other conclusion was possible on admitted or indisputed facts, it is not necessary to quash the order which was passed*
>
> *in violation of principles of natural justice.”*

Now, considering the case on hand, admittedly when it is found that the petitioner did produce the false marksheet while obtaining the appointment as Primary Teacher, even if an opportunity would have been given the result would have been the same, i.e., removal/dismissal from service. Under the circumstances, considering the aforesaid two judgments, one of the Hon'ble Supreme Court and another of this Court, the impugned order is not required to be quashed and set aside on the ground that the same is in breach of principles of natural justice. The only order which can be passed in the present case is order of dismissal of the petitioner from service as she has obtained the appointment as

Primary Teacher by fraud and by producing false marksheet. If the petitioner would not have produced the false marksheet and would have produced the original-marksheet, then in that case the petitioner might not have even got the service as it appears from the original marksheet she has obtained 35 marks at least in 4 subjects. It is to be noted that the petitioner was appointed as Primary Teacher, and as a Primary Teacher she is required to teach the students. As the petitioner herself has obtained the appointment as Primary Teacher by fraud and by producing false marksheet, one cannot imagine what morale and lessons she would teach to the students. A Primary Teacher who has obtained the appointment by fraud and producing false marksheet cannot be continued in service in that capacity. Under the circumstances also, the impugned order, removing the petitioner from service, cannot be said to be illegal and/or arbitrary which requires interference of this

Court under Article 226 of the Constitution of India.

7. Now, so far as the contention on behalf of the petitioner that the petitioner is sought to be removed after 10 years is concerned, it is required to be noted that the petitioner has obtained the appointment as a Primary Teacher by fraud and by submitting false marksheet, and as soon as it was brought to the notice of the respondent action has been taken. Even otherwise, fraud vitiates everything and appointment by fraud is a nullity. Under the circumstances, the contention on behalf of the petitioner, that as the petitioner is sought to be removed after 10 years such an action should not be permitted, cannot be accepted.

8. For the reasons stated above, the petition fails and it is dismissed. However, there shall be no order as to costs.

[M.R. Shah, J.]

rmr.